

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION

SHEILA BRECKENRIDGE,

Petitioner,

v.

CASE NO. 2:08-CV-943
JUDGE HOLSCHUH
MAGISTRATE JUDGE KING

COURTNEY WASHINGTON,
Probation Officer, Franklin County, Ohio,

Respondent.

OPINION AND ORDER

On June 9, 2009, the Magistrate Judge issued a *Report and Recommendation* recommending that the instant petition for a writ of habeas corpus pursuant to 28 U.S.C. 2254 be dismissed. *Order and Report and Recommendation*, Doc. No. 14. Petitioner has filed objections to the Magistrate Judge's *Report and Recommendation*. *Objection*, Doc. No. 16. Respondent has filed a response to the objections. *Response*, Doc. No. 17. For the reasons that follow, petitioner's objections are **OVERRULED**. The *Report and Recommendation* is **ADOPTED** and **AFFIRMED**. This action is hereby **DISMISSED**.

Petitioner objects to the Magistrate Judge's recommendation that her habeas corpus petition be dismissed as unexhausted and without merit. Petitioner states that the Magistrate Judge misconstrued her claim by stating that petitioner alleged that her probation officer illegally extended the term of her community control by one year and increased the amount to be paid each month toward restitution. However, the Court notes that the petition indicates as follows:

Probation Officer Courtney Washington extended my sentence illegally when she imposed a year more, and raised the fine/costs to \$1500 although I was ordered by the court to pay \$100 each month until fully paid. No law, nor jurisdictional authority was obtained by the Respondent.... I am in illegal custody as a result.

Petition, at 5. The Magistrate Judge did not misconstrue the allegations contained in the petition.

Petitioner also again contends that her term of community control had expired “prior to the so-called extended sentence imposed by the [trial] court on October 29, 2008.” *Objection*, at 2. Petitioner complains that her probation officer improperly attempted to secure petitioner’s agreement to an extension of her sentence and to an increase in the amount of her monthly restitution payments. *Id.* Petitioner again asserts that the probation officer thereby violated petitioner’s right to due process and equal protection of the law. *Id.*, at 3. Petitioner also contends that she has no redress available in the state courts and complains that the Clerk of the Franklin County Court of Common Pleas never served on her a copy of the trial court’s judgment extending the term of her community control. *Id.*

Pursuant to 28 U.S.C. §636(b), this Court has conducted a *de novo* review of the Magistrate Judge’s *Report and Recommendation*. For the reasons discussed therein, petitioner’s arguments are not persuasive. As noted by the Magistrate Judge, the respondent filed merely a request for revocation of petitioner’s “probation.” *Exhibit G to Return of Writ*. It was the state trial court, in a judgment entry dated October 29, 2008, that

actually extended petitioner's community control. *Exhibit J to Return of Writ*. Therefore, petitioner's June 2008 state habeas corpus petition did not properly exhaust her claim for federal habeas corpus review. Further, and contrary to petitioner's argument here, she may still pursue a delayed appeal of the trial court's October 29, 2008, decision pursuant to Ohio Appellate Rule 5(A). This is true, moreover, even if petitioner never received a copy of the trial court's judgment entry.

Because such remedy remains available to petitioner, this action remains unexhausted.

Therefore, petitioner's objections are **OVERRULED**. The *Report and Recommendation* is **ADOPTED** and **AFFIRMED**. This action is hereby **DISMISSED**.

The Clerk shall enter **FINAL JUDGMENT**.

Date: June 30, 2009

/s/ John D. Holschuh
JOHN D. HOLSCHUH
United States District Judge